

No. 5:13-CR-6-2H  
No. 5:14-CV-888-H

V.

## ORDER

Petitioner filed his original motion to vacate under 28 U.S.C. § 2255 on December 15, 2014, during the pendency of his appeal on direct review to the Fourth Circuit Court of Appeals. While petitioner's motion to vacate was pending before this court, the Fourth Circuit issued its judgment affirming petitioner's judgment entered in this court, and the mandate was issued on April 24, 2015. Petitioner did not file a petition for writ of certiorari at the Supreme Court of the United States; therefore, his judgment became final 90 days after the mandate was filed by the Fourth Circuit. See United States v. Sanders, 247 F.3d 139, 142 (4th Cir. 2001) (Judgment becomes final on "the date upon which [petitioner] declined to pursue further direct appellate review"). Less than one year after his judgment

became final and within one year from the Supreme Court's decision in Johnson, petitioner filed the instant motion to amend his motion to vacate on the basis of the new rule created by the Supreme Court in Johnson and made retroactive in Welch v. United States, \_\_ U.S. \_\_, No. 15-6418, 2016 WL 1551144 (U.S. Apr. 18, 2016).

Therefore, in its discretion and for good cause shown, the court GRANTS petitioner's motion to amend, [D.E. #166]. In accordance with Standing Order 15-SO-2, the Federal Public Defender or, in the event of a conflict, CJA counsel, shall assist petitioner in obtaining any relief to which he may be entitled. The clerk is therefore DIRECTED to serve a copy of this order on the Federal Public Defender for the Eastern District of North Carolina. Counsel for the petitioner shall have 30 days to file a supplemental brief. The government shall then have 21 days to file a supplemental response to petitioner's amended motion to vacate under 28 U.S.C. § 2255 in light of Johnson. Petitioner shall have 14 days to file any reply to the government's response.

This 30<sup>th</sup> day of June, 2016.

  
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Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#34